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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 JAMES JANTOS, individually and on
9 behalf of similarly situated individuals,

10 Plaintiff,

11 v.

12 DIRECTV, et al.,

13 Defendants.

C18-413 TSZ

MINUTE ORDER

14 The following Minute Order is made by direction of the Court, the Honorable
15 Thomas S. Zilly, United States District Judge:

16 (1) Plaintiff's unopposed motion for leave to amend his pleading, docket
17 no. 37, is GRANTED. Plaintiff shall electronically file any amended complaint within
18 fourteen (14) days of the date of this Minute Order.

19 (2) The parties' joint motion, docket no. 38, for preliminary approval of class
20 action settlement is DENIED without prejudice for the following reasons:

21 (a) Definition of the Class: When this action commenced, the putative
22 class consisted of all individuals (i) who were subscribers of DirecTV and were
23 charged for DirecTV and CenturyLink services in a combined bill, and (ii) whose
personally identifiable information was publicly available since March 19, 2014.
The parties now ask the Court to certify for settlement purposes a nationwide class
of CenturyLink customers "who **received** notice from CenturyLink that their
CenturyLink bills were accessible online between March 5, 2017, and May 18,
2017." *See* Prop. Order at 4 (docket no. 38-2) (emphasis added); *see also*
Settlement Agreement at § I(JJ) (docket no. 38-1). The parties' joint motion,
however, suggests that the class is comprised of CenturyLink customers "who

1 were sent notice” that their bills were accessible online. See Mot. at 4 (docket
2 no. 38) (emphasis added, erroneously citing § 1(HH) of the proposed Settlement
3 Agreement). The difference in wording is significant, and it has raised doubts
4 concerning whether the proposed definition of the class is sufficient to render the
5 members of the class ascertainable. Although CenturyLink presumably has a
6 record of the addresses to which it sent notices about the online accessibility of
7 certain bills, the parties provide no indication that CenturyLink or any other entity
8 has a list of individuals who actually received such notices. Moreover, although
9 a copy of the notice has been filed as an attachment to the currently operative
10 pleading, see Ex. A to Compl. (docket no. 1-1), the parties have offered no
information concerning when or in what manner the notice was sent or would have
been received by putative class members, and thus, whether any notice that might
have been received qualifies an individual as a member of the class cannot be
determined. Finally, the parties have not addressed whether the class of persons to
whom notice was sent is merely a subset of the group of individuals whose
CenturyLink and/or DirecTV bills were accessible online during the period at
issue, and if not, why the class should not be comprised of all individuals affected
by the technical problem with CenturyLink’s MyAccount portal, as opposed to
just those who received notice of the issue.

11 (b) Typicality and Adequacy: The parties propose to divide a class of
12 855 members into two subclasses, namely (i) a subclass of 311 persons who each
13 bundled their CenturyLink and DirecTV services and would receive \$700 from the
14 settlement, in installments of \$599 the first year and \$101 the second year, in the
15 form of either check or credit to their CenturyLink accounts, and (ii) a subclass of
16 544 persons who did not have DirecTV services, and would receive no settlement
17 funds, but would be given an activation code for one year of credit monitoring.
Plaintiff James Jantos is in the first subclass. Given the disparity in the benefits
that the first and second subclasses would receive from the proposed settlement,
which the parties contend correlates with the differences in the claims of the first
and second subclasses and the available remedies, the Court is not satisfied that
plaintiff’s claims are typical of the claims of the class, as opposed to just the first
subclass, or that plaintiff can fairly and adequately represent the interests of the
members of the second subclass.

18 (c) Notice: In addition to the problems outlined above, which also
19 affect the form of notice to be provided to putative class members, the parties’
proposed notice cannot be approved for the following reasons:

20 (i) The proposed form of notice instructs class members to send
21 objections directly to the Court, as well as to the settlement administrator.
22 This approach requires any class member wishing to object to incur
23 unnecessary duplication charges and postage, and it might unreasonably

1 burden court staff. All correspondence from class members, including
2 objections, opt-out forms, and notices of intent to appear at a final approval
3 hearing, should instead be sent to the settlement administrator, which shall
4 distribute such materials to counsel as counsel directs, prepare a suitable
5 affidavit or declaration summarizing such submissions (or lack thereof),
6 and electronically file such affidavit or declaration, along with copies of all
7 executed opt-out forms and objections (redacted as required by Local Civil
8 Rule 5.2), at least seven (7) days before any final approval hearing. The
9 parties are encouraged to create an opt-out form, to distribute the opt-out
10 form along with notices mailed and/or emailed to class members, and to
11 make the opt-out form available for download from the website maintained
12 for this matter.

13 (ii) Contrary to the repeated statements in the proposed form of
14 notice, the Court will not require that class members submit written
15 objections or notices of intent to appear as a prerequisite to appearing and
16 being heard at a final approval hearing. To be clear, class members and/or
17 their counsel may present objections and any other remarks at a final
18 approval hearing, without providing advance notice of their intent to do so.

19 (iii) The proposed form of notice indicates that materials may be
20 obtained by class members from the Clerk of the Court. This plan is
21 unworkable for both the Clerk of the Court and class members, who
22 apparently reside in all states and territories of the United States, and who
23 might not be able to easily get to the courthouse to review the items in the
case file. The parties are directed to instead post on the website maintained
for this matter all materials relating to this action that class members might
wish to view, and to include appropriate language to that effect in the class
notice.

(iv) Any form of notice shall not give the misimpression that the
Court has already approved the proposed class action settlement. Thus, the
phrase "THE COURT APPROVES THIS NOTICE" (page 8), the signature
block for the Court, and any similar wording should be stricken from the
class notice.

(d) Future Disputes: The Settlement Agreement contemplates that any
future disputes between the parties, including whether a particular person is a
member of the class, will be resolved by the Court. See Settlement Agreement at
§ V(A) (docket no. 38-1). If the Court approves a class action settlement in this
matter, it will not retain jurisdiction or resolve future disputes. To the extent that
the parties envision having any disagreements concerning who qualifies as a
member of the class, the Court will not preliminary approve any proposed class
action settlement.

1 (3) Any renewed motion for preliminary approval of class action settlement
2 shall be filed within thirty-five (35) days of the date of this Minute Order. If no renewed
3 motion is timely filed, the Court will issue a scheduling order setting a trial date and
4 related dates and deadlines.

5 (4) The parties are reminded that notices of their proposed settlement must be
6 sent to the appropriate federal and state officials at least ninety (90) days before any final
7 approval hearing. See 28 U.S.C. § 1715. The parties are also advised that the Court will
8 require any motion for attorney's fees be filed at least thirty-five (35) days before the opt-
9 out deadline and be available online through the website maintained for this matter, as
10 well as via mail or email upon request.

11 (5) The Clerk is directed to send a copy of this Minute Order to all counsel of
12 record.

13 Dated this 7th day of November, 2018.

14 William M. McCool
15 Clerk

16 s/Karen Dews
17 Deputy Clerk